

Federalism Power is a Zero Sum Game!

Chapter 3

Forms of Government- Unitary

- Unitary- Central Government Rules over everything

- EG, France, England, Turkey

- No provincial/State Govt.

- Same laws throughout the Country

Practical Difference

- Teachers apply to Paris or London for a job in Nice or York

- Gun laws throughout the country are the same

- One Bar Exam for Lawyers, One Med Exam for Doctors
one drivers license exam for everyone

Federal

- Powers are allocated between Central Govt. and Provincial or State Govt.
 - EG- Canada, US, Germany
 - Often a Constitution sets forth the respective roles
 - Central Government has power on a set # issues, State Govt. on others
 - US Central Govt. prevails (Supremacy Clause) on all issues where the Constitution empowers the Central Govt. (ie. Marijuana laws v. Assisted Suicide laws)
 - Practical Difference
 - Some national laws but most laws are State or Provincial
 - Many Governments each with their own rules
 - Practice law in another State requires passing another Bar exam
 - Gun laws can be quite different from State to State
 - Can lead to a “least common denominator” problem, especially on expensive issues, such as environmental laws or worker protection
 - Jim Crow laws

Confederate System

- Central govt. power is only what the State/Provincial Govt. is willing to cede. Little to no means of enforcement
 - EG U.N., Articles of Confederation, other IGOs.
 - Central Government has no direct relationship w/people (individuals)
 - State/Provincial Governments can not be forced to do something.
 - Practical Difference
 - No National laws
 - Each State is sovereign to itself, can discriminate against other State and act unilaterally
 - US goes to War in Iraq,
 - USSR enters Afghanistan (1979), Czechoslovakia (1968), Hungary (1956)
 - Human Rights violations go largely unchecked
 - Dafur, China Saudi Arabia, Burma, Zimbabwe, Iran
 - Countries fail or refuse to pay dues
 - Articles of Confederation
 - See Constitution and Articles of Confederation outline

Positives of Strong Central Govt.

- Coordination of Resources
- Uniform treatment of citizens throughout country
- Positive Spillover effects, few negative spillover effects, economies of scale
- Easier to raise taxes
- Expertise

Positives of Federalism

- More governments at many levels allow people to have *more representation* and also take part in political affairs
- Laboratories of Experiments*, one size doesn't always fit everyone.
- States/Provinces laws/organization can reflect *cultural idiosyncrasies*
- Diffusion of Power* means less likely to have a tyrannical govt.

Negatives Federalism

- Where's the line is drawn between Central and State Govt. power?
- Lowest Common Denominator problem,
 - States aggressively compete and lower standards
- More opportunities for corruption to take place, often at the local level (not always...see Jack Abramoff)
- States often have less expertise
- Confusion on laws, as people move from one State to another, remember ignorance of the law is no excuse
- Cultural idiosyncrasies may include racism et. Al.
- Taxes at every level, little economies of scale, lots of repetition
- States can't have budget deficits

Historical State Role

- Police and enforcement of Crime
 - Property- Zoning laws etc..
 - Health
 - Education- Schools
 - Morality- Obscenity Standards
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- Think -what types of activities does it seem the Town of Darien has a significant effect upon?

Important Constitutional Provisions

- Supremacy Clause
- Full Faith and Credit Clause
- Commerce Clause and other Enumerated Powers (art. 1 S8)
- Necessary and Proper Clause and other Implied Powers
- Privileges and Immunities Clause
- Concurrent Powers
- 9th Amendment- Unenumerated Rights protected
- 10th Amendment- Reserve Clause
- 11th Amendment- Limits on lawsuits against States
- 14th Amendment- Due Process and Equal Protection Clause
- “Judicial Review”? Not in Constitution but has played a huge role, -inferred into Constitution

US-Federalism- HISTORY

- Civil War
- Reconstruction
- Interstate Commerce
- New Deal
- Great Society
- Devolution Revolution

Important Historical Events

- Some reinterpretations of Federalism
- Early Republic
 - Jefferson/Hamilton- Necessary and Proper Clause and 1st Bank of US
 - How elastic is the elastic clause, especially when combined w/the Commerce Clause (Art. 1 S8)
 - Ky and Va. Resolutions, nullification crisis, what's the power of the State?
 - Dual Federalism- limited role of the Central Govt.
- Civil War- Greatly expanded Role of the Central Govt.
 - Concentration of power in the Central Govt.
 - Income Tax, Conscription
 - Morrill Land Grants
 - 14th Amendment
- Industrialization 19th Century
 - Interstate Commerce
 - Transcontinental Railroad
 - Need for Coordination- Commerce Department created
 - Progressive Period
 - Demands for checks on Govt Power, enfranchise the “people”

Historical events cont'd

- Mobilization for War- WWI-
 - Vast expansion of Federal role in the economy
- Depression- New Deal-
 - Still limited role but beginning of acceptance of Fed Govt. as the mechanism to resolving
- WWII- Enormous Mobilization requires centralization of power
- 1950's-1970's
 - Civil Rights Movement- Jim Crow Laws, Brown v. Bd of Ed. Involvement of Central Govt. , Women's movement
 - Great Society- LBJ- War on Poverty
 - Environmental Movement
- Devolution Revolution- Reagan 1980s movement attempt to reign in Central Govt., largely ineffective.
- 1994 Newt Gingrich's Contract w/America
- Post 9/11- Concentration of Power in the Fed. Govt.
- Health care reform?

Legislative Federalism

Every time Congress broadens its role, the Central Government gets bigger-

- Industrial Age
 - Department of Agriculture,
- Progressive Period
 - FDA , Income Tax
 - Dept. of Labor Dept. Commerce Created
- Pre New Deal
 - Largely Picket Fence Federalism or Layer Cake Federalism
- Post New Deal Conditions of Aid
 - Social Security
 - Grants in Aid (major growth since WWII)
 - Revenue Sharing (State's like this!)- sometimes called Fiscal Federalism

and More....

■ Great Society

- Categorical Grants (Drinking Age and Highways) Dole Case (States don't like this)
- Marble Cake Federalism
- Medicare/Medicaid
- Dept. Housing and Urban Dev., (today HHS and Housing and Urban Dev.)

■ Devolution Revolution – 1980s- Reagan

- Contract For America (1994) Newt Gingrich and Republican Revolution
- Block Grants (Welfare Reform Act)
- Regulatory Federalism- Mandates
 - Funded
 - Unfunded (Congressional legislation to stop unfunded)
 - Example- Handicapped access in Public Schools

■ GWB and Post 9/11

- Dept. Homeland Security
- No Child Left Behind- Education

■ Obama

- Medical Care

Commerce Clause- Federalism

- Specific Legislation Passed via Commerce Clause combined w/Necessary and Proper Clause
 - Americans with Disability
 - Family and Medical Leave Act,
 - Water Quality Act,
 - Federal Highway Act,
 - Civil Rights Act of 1964, 1968,
 - Violence Against Women Act
- Other types of Legislation expanding national role
 - Voter Rights Act of 1965,
 - Motor Voter Act 1990s,
 - 2002 Voter Reform
 - Homeland Security

Part II - Courts

- Every time Supreme Court finds against a State law (eg.early 1900s State's protect labor).

- 14th Amendment –Due Process and Selective Incorporation of the Bill of Rights

- Upholds a Federal law (Highway Act and driving and DWI).

- Finds a “new right” (Contraceptives)

The role of the Central/Federal Govt.

EXPANDS!!!!!!

Marshall to New Deal

- **Marshall, (Advances Federalism)**
 - McCullough v. Maryland
 - Gibbons v. Ogden
- **Taney (Advances States-Rights)**
 - Dred Scott (invalidates Missouri Compromise passed by Congress)
- **14th Amendment Passed (20th Century expands rights)**
 - Extends Bill of Rights to the States, Due Process Clause
 - Equal Protection Clause
- **Post Civil War Reconstruction Cases (Advances State Rights)**
 - Early Civil Rights Acts declared unconstitutional
- **Early 1900s (Mixed Results)**
 - Court strikes down State Laws limiting, upholds rights in special circumstances cases (Mueller v. Oregon) Women and Minor Working conditions *officials*.
 - Lochner v. New York, struck down State Law
 - Swift and Company v. United States, 196 U.S. 375 (1905) early Commerce Clause case
 - Grandfather Clause (see Jim Crow) found unconstitutional (LIMITS STATE POWER)
- **Initial New Deal**
 - Schechter Poultry- Right of the State to interfere w/Contracts- Held Unconstitutional (LIMITS STATE POWER)

New Deal

- NLRB case signals beginning of acceptance of New Deal by Court

1954 to 1986

■ **Warren Court- Expansion of “rights”**

- Advancement of Civil liberties/Civil Rights
 - Brown v. Bd. Of Ed.- largely ended Jim Crow laws
 - Heart of Atlanta- upheld Civil Rights Act of 1964
 - Griswold v. Connecticut (Right of Privacy-Contraceptives)
 - Swann (Election laws)- Proportional representation- No Malapportionment
 - Criminal Rights- Miranda, Mapp, -
 - Religion- Lemon case

■ **Burger Court**

- Roe v. Wade (extends Right of Privacy to Abortion)

Rehnquist Court- 1986-2005

Roberts Court 2006-present

- **Mixed Record, Devolution Revolution**
 - S. Dakota v. Dole and Garcia (1980s cases extending Federal-Extended Central Govt. (Categorical Grant))
 - Gun registration and the Brady Bill, Guns in School(Printz)-struck down- Limited Central Govt
 - Domestic Violence Act- (Morrison) struck down- Limited Central Govt
 - Amer. w/Disability Act- upheld- upheld-Extended Central Govt
 - Family and Medical Leave Act (Hibbs v Nevada) upheld-extended Central Govt

AND MORE AND MORE AND MORE-- -Where will the Supreme Court go from here?

Bush v. Gore- Extended Central Govt. on voting rights

Lawrence v. Texas- privacy rights (extended to sexual conduct of consenting adults)- State's can't legislate

Execution of Mentally Retarded persons- banned- State's inhibited

Execution of Minors – banned extended CG

??? Life sentences w/out parole for Juveniles---on the Court docket

DC GUN LAWS- Court for the 1st time clearly states Gun's are a personal right- strikes down DC law.- "Fundamental Right"?

2010! Court reverses 100 years of precedent- wipes out restrictions on Corporate (and union) \$\$\$ on political issues- -nullifies 20+ State laws restricting Corporations (and union) \$\$\$- "Fundamental right?"